

1 KEVIN G. McCURDY (SBN 115083)
2 MARY P. McCURDY (SBN 116812)
3 McCURDY & FULLER LLP
4 4300 Bohannon Drive, Suite 240
Menlo Park, CA 94025
Telephone: (650) 618-3500
Facsimile: (650) 618-3599

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6 Attorneys for Defendant
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 INTEL CORPORATION, a Delaware
11 Corporation,

12 Plaintiff,

13 v.

14 THE INSURANCE COMPANY OF THE
15 STATE OF PENNSYLVANIA, a
16 Pennsylvania Corporation, and DOES 1
through 100, inclusive

17 Defendant.

CASE NO. C08 03238 JF

**DEFENDANT THE INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA'S RESPONSE TO
NOTICE OF PENDENCY OF OTHER
ACTION OR PROCEEDING**

18 Pursuant to Local Rule 3-13(c), defendant The Insurance Company of the State of
19 Pennsylvania ("ICSOP") responds to plaintiff Intel Corporation's ("Intel") notice of pendency of
20 other action or proceeding. ICSOP opposes Intel's request that this matter be coordinated with an
21 action entitled *Intel Corporation v. XL Insurance American, Inc.*, Santa Clara County Superior
22 Court Case Number 1-06-CV-061620 ("XL Action").

23 Intel filed the XL Action on April 12, 2006 seeking coverage from one of its insurance
24 carriers, XL Insurance America, Inc. ("XL"), for two class action lawsuits filed against Intel
25 entitled *Barbara's Sales, Inc., et al. v. Intel Corporation, et al.*, Circuit Court of Madison County,
26 Illinois Case Number 02-L-788 ("Barbara's Sales Action") and *Janet Skold, et al. v. Intel*
27 *Corporation, et al.*, Santa Clara County Superior Court Case Number 1-05-CV-039231 ("Skold
28

1 Action”).

2 Intel filed the instant action on July 1, 2008 in Santa Clara County Superior Court. Intel
3 asserts causes of action for breach of contract and declaratory relief against ICSOP on the ground
4 that ICSOP is obligated to defend and/or indemnify Intel for the Barbara’s Sales Action and Skold
5 Action under an ICSOP excess liability policy that was in effect from 1998 to 2001. The ICSOP
6 policy at issue in this case is directly excess of the XL policy that is at issue in the XL Action.

7 Although the ICSOP policy is directly excess of the XL policy and follows form to that
8 policy, Intel chose not to include ICSOP in the XL Action. Upon learning of the pendency of the
9 XL Action, ICSOP contacted Intel’s counsel and suggested that ICSOP should intervene in that
10 action given that Intel had tendered defense and indemnity of the Barbara’s Sales Action under the
11 ICSOP policy. Intel’s counsel requested that ICSOP not attempt intervention in the XL Action.
12 ICSOP agreed to its policyholder’s request.

13 On or about June 6, 2008, Intel’s counsel advised ICSOP’s counsel that Intel and XL had
14 reached a settlement agreement regarding Intel’s claims against XL. It is ICSOP’s understanding
15 the settlement will result in dismissal of the XL Action. On June 10, 2008, Intel’s Risk Manager
16 sent a letter to ICSOP advising ICSOP of Intel’s settlement with XL.

17 There is no reason to “coordinate” this action with the XL Action. As Intel states in its
18 notice, it has reached a settlement agreement in principal with XL. Intel states that the XL Action
19 has yet to be dismissed. However, Intel does not suggest that the XL Action will continue once the
20 settlement is finalized. XL is the only defendant in the action and thus, it appears obvious the
21 action will be dismissed once settlement is finalized.

22 ICSOP has requested that Intel produce its settlement agreement with XL or that it provide
23 ICSOP with the details of the settlement agreement with XL. Intel has refused ICSOP’s request.
24 Notably, Intel also does not advise this Court of any of the terms of the agreement, including
25 whether the settlement agreement contemplates dismissal of the XL Action. This obviously would
26 be a key fact in any decision to “coordinate” proceedings. However, absent representation by Intel
27 to the contrary, the Court certainly may assume that the settlement agreement with XL

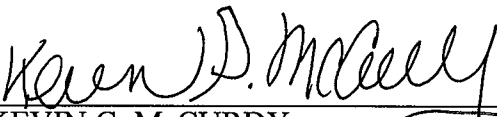
1 contemplates dismissal of the XL Action. Since the XL Action will be dismissed, there is nothing
2 to coordinate.

3 In addition, Intel's current suggestion that the cases should be coordinated to "avoid
4 conflicts, conserve resources and promote efficient determination of the action" is contrary to its
5 prior conduct. Intel chose not to include ICSOP in the XL Action and requested that ICSOP not
6 seek intervention in that action. Instead, Intel waited until it settled with XL and then filed a
7 second, separate case in State court against ICSOP. The filing of two separate actions, two years
8 apart, against insurers whose policies contain the same language is not consistent with a purported
9 desire to "conserve resources and promote efficient determination of the action."¹

10 Intel chose to first pursue XL and then file a separate action against ICSOP. ICSOP has
11 properly removed this breach of contract action to this Court on the basis of diversity jurisdiction.
12 The XL Action has settled and presumably will be dismissed shortly. Therefore, there is no basis
13 for coordination.

14 Dated: July 7, 2007

15 McCURDY & FULLER LLP

16 By 
17 KEVIN G. McCURDY
18 MARY P. McCURDY
19 Attorneys for Defendant
20 THE INSURANCE COMPANY OF THE
21 STATE OF PENNSYLVANIA

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27 ¹ Intel also notes that the Skold Action is pending in Santa Clara County Superior Court. However, Intel does not
28 suggest that action qualifies as an other action or proceeding under Local Rule 3-13. This case is an insurance
coverage case. The Skold Action is purported class action against Intel arising out of alleged misrepresentations
regarding Intel's Pentium 4 processors.